



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

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Governor

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Commissioner

October 3, 2011

Elizabeth A. Herland
U.S. Fish & Wildlife Service, Great Meadows NWR
73 Weir Hill Road
Sudbury, MA 01776

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07, Major Project Dredge Certification
Wildlife Habitat Restoration & Enhancement

At: Great Meadows National Wildlife Refuge – Monson Road - Concord

401 WQC BRP WW 07 Transmittal No: X237779
Wetlands File No: 137-1028

Dear Ms. Herland:

The Department has reviewed your application for Water Quality Certification (WQC), as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, it has been determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The U.S. Fish & Wildlife Service (USFWS) proposes to restore & enhance approximately 200 acres of bird and turtle habitat within their two manmade impoundments adjacent to the Concord River in Concord, Massachusetts

The Concord River and the adjacent wetlands are designated in the Massachusetts Surface Water Quality Standards as Class B. Such waters are designated;

"...as habitat for fish, other aquatic life and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation. Where designated in the tables to 314 CMR 4.00, they shall be suitable as a source of public water supply with appropriate treatment. Class B waters shall be suitable for irrigation and other agricultural uses and for compatible industrial and cooling process uses. These waters shall have consistently good aesthetic value."

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Anti-degradation provisions of these standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

The applicant's proposal is to dredge and remove aquatic weeds from existing ditches within the refuge impoundments to create deeper water habitat and to better control water levels to help control invasive aquatic plants and to excavate five refugia pools adjacent to the ditches. Initially, dredge spoils were to have been deposited in specific locations to create elevated wetland platforms but because of the nature of the material and distances equipment would travel throughout the wetlands to create these platforms, this was determined to be more disruptive to the rare species and create significant negative impacts to the wetlands the equipment would traverse, therefore the platform portion of the project was eliminated and the material will be side-casted in a thin layer and in such a manner so as to not impede drainage flows. Low ground pressure and amphibious equipment will be used. All activities are coordinated with the Massachusetts Natural Heritage & Endangered Species Program who has been advising USFWS on this project. Quantities of dredged material and resource area impacts have been provided with the accompanying Water Quality Certificate Application and the Notice of Intent.

Soil samples were collected throughout the site for chemical analysis. Seven core samples were collected within the proposed dredge footprint (i.e. drainage ditches) for gradation and chemical analysis. Results of the gradation analysis showed that the sediment silty, ranging from 15.7 percent to 39.6 percent passing the No. 200 U.S. Standard Series Testing Sieve.

Initial chemical analysis detected the presence of metals, Polychlorinated Biphenyls (PCBs), Total Petroleum Hydrocarbons (TPHs), pesticides. All detected concentrations were below the Reportable Concentration (RC) S1 criteria of the Massachusetts Contingency Plan (MCP) or non-detect.

Public Notice: The 401 WQC application public notice was published in the Concord Journal on June 16, 2011 and the Department received no comment during the 21-day public comment period, which ended on July 7, 2011.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law. The Department further certifies in accordance with 314 CMR 9.00 that there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law. Finally, the Department has determined that upon satisfying the conditions and mitigation requirements of this approval, the project provides a level of water quality necessary to protect existing uses and accordingly finds that the project as implemented satisfies the Surface Water Quality Standards at 314 CMR 4.00.

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1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.
2. Prior to the start of work, the Department shall be notified of any change(s) in the proposed project or plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.
3. Work in waters and wetlands shall conform to the following documents entitled; 1) BRP WW 07, 401 Water Quality Certification – Projects Proposing More Than 100 Cubic Yards Dredging or Disposal of Dredged Material, dated June 8, 2011; 2) WPA Form 3 - Notice of Intent Massachusetts Wetlands Protection Act M.G.L. c. 131, ss40, dated June 1, 2009; and 3) email from Tom Eagle USFWS to James Sprague, MassDEP, dated August 31, 2011 regarding Concord Impoundment – on-site meeting & proposed change in tactics, that includes Ditch Cleaning and Refugia modifications and dredging methodology and includes modified dredging plan Figure 3. The Department shall be notified if there are modifications and or deletions of work as specified in the plans. Depending on the nature of the scope change, approval by the Department may be required.
4. The Department shall be notified by phone by contacting, Jim Sprague 617-654-6601 or by email at James.Sprague@state.ma.us, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.
5. The Certification remains in effect for the same duration as the federal permit that required it.
6. Best Management Practices (BMPs) shall be deployed to minimize turbidity.
7. DEP shall be notified within 24 hours, verbally and in writing, of any impacts to any resource area and/or habitats that occur during the construction phase of the project beyond that authorized by this Certificate. Such occurrences/incidents include, but are not limited to; fill or excavation beyond the project footprint/limits, observed dead or distressed fish or other aquatic organisms, an observed oily sheen on surface water, sediment spill, observed turbidity plume beyond the deployed BMP's, or equipment accident/spills, all site related activities impacting the water shall cease until the source of the problem is identified and mitigation measures employed. Activities shall not recommence until the DEP is satisfied that the mitigation measures implemented have adequately addressed impacts from the incident
8. The applicant/contractor shall comply with the terms and conditions of the Order of Conditions for this project issued under DEP File No. 137-1028 and issued by the Concord Natural Resource Commission dated July 17, 2009.
9. Excavated material to will be side casted in such a manner and in a thin depth so as to not

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impede flows and to not change the ecological condition of the impact site by creating mounded berms.

10. The Applicant shall allow MassDEP staff and conservation commission representatives to enter the Project and mitigation sites to verify compliance with the conditions of this Certificate.
11. Copies of site plan or any permit/order amendment shall be provided to the MassDEP-Boston and appropriate conservation commission representatives. Any modifications to the plans and documents cited within this Certificate must receive Department approval prior to implementation
12. Refueling, washing, or other maintenance of vehicles and construction equipment, and storage of hazardous materials shall not take place within Resource Areas or Buffer Zone.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

- a. the applicant or property owner;
- b. any person aggrieved by the decision who has submitted written comments during the public comment period;
- c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
- d. any governmental body or private organization with a mandate to protect the environment, which has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L. c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor

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Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 5th Floor
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 314 CMR 9.10(3):

- a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
- b. the complete name of the applicant and address of the project;
- c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- e. a clear and concise statement that an adjudicatory hearing is being requested;
- f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
- g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing

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authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Jim Sprague at 617-654-6601.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann Lowery".

Ann Lowery
Acting Assistant Commissioner
Bureau of Resource Protection

Cc Concord Natural resource Commission